IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 29172 of 1995

Between:

Sri Vijaya Lakshmi Kalasi Sangham rep by its Secretary Sri C.Kurma Rao S/O Ramaswamy R/O Alamanda, Vishakapatnam DIST.

..... PETITIONER

AND

1 SRI Lakshmi Srinivasa Rice & Oil Mills rep by its Partner SRI.K.Venkataramana Alamanda Vishakapatnam DIST.
2 The Presiding officer
Industial Tribunal cum Labour Court, Vishakapatnam Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of certiorari calling for the records relating to and connected with award dt:18/04/1995 in I.D.NO.112/1991 in the court of Industrial Tribunal Cum Labour Court, Vishakhapatnam and quash or set aside the same and issue a consequential direction to reinstate the workers with all consequential benefits.

Counsel for the Petitioner: MR.D.V.SITARAMAMURTHY

Counsel for the Respondent No.1: MR.A.S.RAMA SARMA

Counsel for Respondent No.2: G.P. for Labour

The Court made the following:

O R D E R:

This Writ Petition is filed challenging the Award dated 18.4.1995 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.112 of 1991.

2. The Union of the Workmen raised the following dispute for adjudication:

> "*Whether the management of Laxmisrinivasa Rice & Oil Mill, Alamanda, Vizianagaram District is justified in terminating the services of the following workers: 1) Smt. Gosi Simhadri (Maistry), 2) Smt.Nakkani Gangamma, 3) Smt. Ippaka Bangaramm, 4) Smt.Yeddu Pydamma, 5) Smt.Karagani Kondamma, 6) Sri Chepa Ramaswamy, 7) Sri Lagudu Ramu, 8) Sri Sarvasiddi Apanna, 9) Bilapudi Suryanarayana (Mastry), 10) Sri Nakkam Thota Rao and 11) Sri Marupudi Arjuna. If not to what relief they are entitled.*"

3. The matter was contested by the Management.

4. It is the contention of the management that they never employed the workmen whose services were alleged to have been terminated.

5. Before the Tribunal ten witnesses were examined and Exs:W-1 to W-9 were marked on behalf of the workmen. MW-1 was examined and Exs:M-1 and M-2 were

got marked on behalf of the management. The learned Tribunal after considering the matter held that the petitioners were not the workmen of the respondent's-management and accordingly nil award was passed holding that they are not entitled. Assailing the said Award, the present Writ Petition has been filed by the workmen.

6. The learned Counsel appearing for the workmen submits that the management has not filed necessary records, which would establish that the petitioners were worked on daily wage basis.

7. When employment is made on daily wage, no records will be maintained. Therefore, the burden lies on the management to establish the same but not on the workmen. I am afraid that this contention cannot be accepted.

8. When the termination is sought to be adjudicated by virtue of the reference made by the Government, it is for the workmen to adduce evidence and establish that they are workmen and thereafter their services were terminated legally. The Tribunal after finding on the question of fact that the petitioners are not the employees of the respondent-management, has passed the nil award. Under those circumstances, the award of the Tribunal cannot be said to be illegal and without jurisdiction. Hence, I do not find merits in the Writ Petition.

9. Accordingly, the Writ Petition is dismissed. No costs.

_____ G. BIKSHAPATHY, J

Dated:23.9.2004,

Ccm

To:

1. The Presiding Officer, Industial Tribunal cum Labour Court, Vishakapatnam Dist.

2 2 CCs to the G.P. for Labour, High Court Buildings,A.P.Hyderabad

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3 2 CD copies.